

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 63**

[EPA-HQ-OAR-2006-0897; FRL-8547-1]

RIN 2060-AN44

**Amendments to National Emission Standards for Hazardous Air Pollutants for Area Sources: Acrylic and Modacrylic Fibers Production, Carbon Black Production, Chemical Manufacturing: Chromium Compounds, Flexible Polyurethane Foam Production and Fabrication, Lead Acid Battery Manufacturing, and Wood Preserving****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

**SUMMARY:** EPA is publishing technical corrections through this direct final action to amend the national emission standards for acrylic and modacrylic fibers production, carbon black production, chemical manufacturing: chromium compounds, flexible polyurethane foam production and fabrication, lead acid battery manufacturing, and wood preserving area sources published on July 16, 2007. The amendments clarify certain provisions in two of the final area source rules (flexible polyurethane foam production and fabrication and lead acid battery manufacturing) and correct editorial and publication errors in all of the final rules.

**DATES:** This rule is effective on June 24, 2008 without further notice, unless EPA receives adverse comment by April 25, 2008. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule, or the relevant amendments in this rule, will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2006-0897 by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- *E-mail:* [a-and-r-Docket@epa.gov](mailto:a-and-r-Docket@epa.gov).

- *Fax:* (202) 566-9744.

- *Mail:* National Emission Standards for Hazardous Air Pollutants for Area Sources: Acrylic and Modacrylic Fibers Production, Carbon Black Production, Chemical Manufacturing: Chromium Compounds, Flexible Polyurethane Foam Production and Fabrication, Lead Acid Battery Manufacturing, and Wood Preserving Docket, Environmental Protection Agency, Mailcode: 6102T,

1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.

- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-OAR-2006-0897. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the National Emission Standards for Hazardous Air Pollutants for Area Sources: Acrylic and Modacrylic Fibers Production, Carbon Black Production,

Chemical Manufacturing: Chromium Compounds, Flexible Polyurethane Foam Production and Fabrication, Lead Acid Battery Manufacturing, and Wood Preserving Docket, EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sharon Nizich, Sector Policies and Programs Division, Office of Air Quality Planning and Standards (D243-02), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, *telephone number:* (919) 541-2825; *fax number:* (919) 541-3207; *e-mail address:* [nizich.sharon@epa.gov](mailto:nizich.sharon@epa.gov).

**SUPPLEMENTARY INFORMATION:** The information presented in this preamble is organized as follows:

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  - I. National Technology Transfer Advancement Act
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  - K. Congressional Review Act

**I. Why is EPA using a direct final rule?**

EPA is publishing the rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. The amendments to the national emission standards for hazardous air pollutants (NESHAP) consist of clarifications and

corrections that do not make material changes to the rule requirements. If we receive adverse comment on a distinct provision of this rulemaking, we will publish a timely withdrawal in the **Federal Register** indicating which provisions we are withdrawing. The provisions that are not withdrawn will

become effective on the date set out above, notwithstanding adverse comment on any other provision.

**II. Does this action apply to me?**

The regulated categories and entities potentially affected by the final rule include:

Category	NAICS code <sup>1</sup>	Examples of regulated entities
Industry:		
Acrylic and modacrylic fibers production.	325222	Area source facilities that manufacture polymeric organic fibers using acrylonitrile as a primary monomer.
Carbon black production .....	325182	Area source facilities that manufacture carbon black using the furnace, thermal, or acetylene decomposition process.
Chemical manufacturing: chromium compounds.	325188	Area source facilities that produce chromium compounds, principally sodium dichromate, chromic acid, and chromic oxide, from chromite ore.
Flexible polyurethane foam production.	326150	Area source facilities that manufacture foam made from a polyurethane polymer.
Flexible polyurethane foam fabrication operations.	326150	Area source facilities that cut or bond flexible polyurethane foam pieces together or to other substrates.
Lead acid battery manufacturing .....	335911	Area source facilities that manufacture lead acid storage batteries made from lead alloy ingots and lead oxide.
Wood preserving .....	321114	Area source facilities that treat wood such as lumber, ties, poles, posts, or pilings with a preservative.

<sup>1</sup> North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR 63.11393 of subpart LLLLLL (NESHAP for Acrylic and Modacrylic Fibers Production Area Sources), 40 CFR 63.11400 of subpart MMMMMM (NESHAP for Carbon Black Production Area Sources), 40 CFR 63.11407 of subpart NNNNNN (NESHAP for Chemical Manufacturing Area Sources: Chromium Compounds), 40 CFR 63.11414 of subpart OOOOOO (NESHAP for Flexible Polyurethane Foam Production and Fabrication Area Sources), 40 CFR 63.11421 of subpart PPPPPP (NESHAP for Lead Acid Battery Manufacturing Area Sources), or 40 CFR 63.11428 of subpart QQQQQQ (NESHAP for Wood Preserving Area Sources). If you have any questions regarding the applicability of this action to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

**III. Where can I get a copy of this document?**

In addition to being available in the docket, an electronic copy of this final action will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this final action will be posted on the TTN's policy and guidance page for newly

proposed or promulgated rules at the following address: <http://www.epa.gov/ttn/oarpg/>. The TTN provides information and technology exchange in various areas of air pollution control.

**IV. What should I consider as I prepare my comments to EPA?**

Do not submit information containing confidential business information (CBI) to EPA through <http://www.regulations.gov> or e-mail. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404-02), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, North Carolina Attention Docket ID No. EPA-HQ-OAR-2006-0897. Clearly mark all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

**V. What are the changes to the area source NESHAPs?**

*A. NESHAP for Acrylic and Modacrylic Fibers Production Area Sources*

On July 16, 2007 (72 FR 38899), we issued the NESHAP for Acrylic and Modacrylic Fibers Production Area Sources (40 CFR part 63, subpart LLLLLL). The final rule establishes air emission control requirements for new and existing acrylic or modacrylic fibers production plants. These direct final rule amendments make one editorial correction to the NESHAP. We are correcting a regulatory citation in the second sentence of paragraph (a) in 40 CFR 63.11399 (Who implements and enforces this subpart?) to add the phrase "part 63," which was inadvertently omitted from the final rule.

*B. NESHAP for Carbon Black Production Area Sources*

On July 16, 2007 (72 FR 38904), we issued the NESHAP for Carbon Black Production Area Sources (40 CFR part 63, subpart MMMMMM). Subpart MMMMMM establishes air emission control requirements for new and existing carbon black production process units.

1. 40 CFR 63.11402

We are correcting a regulatory citation in 40 CFR 63.11402 (What are the standards and compliance requirements for new and existing sources?) to read "§ 63.1103(f) of 40 CFR part 63, subpart YY" instead of "§ 63.1103 of subpart YY".

## 2. 40 CFR 63.11406

We are also making an editorial correction to the second sentence in paragraph (a) of 40 CFR 63.11406 (Who implements and enforces this subpart?) to add the phrase “part 63,” which was inadvertently omitted from the final rule.

*C. NESHAP for Chemical Manufacturing Area Sources: Chromium Compounds*

On July 16, 2007 (72 FR 38905), we issued the NESHAP for Chemical Manufacturing Area Sources: Chromium Compounds (40 CFR part 63, subpart NNNNNN). The final rule establishes air emission control requirements for new and existing chromium compounds manufacturing facilities.

## 1. 40 CFR 63.11410(c)

We are revising paragraph (c)(3)(iii) of 40 CFR 63.11410 to correct the biennial inspection requirements for wet electrostatic precipitators. The first sentence in paragraph (c)(3)(iii) identifies the components of the inside of the wet electrostatic precipitator that must be inspected during periodic inspections, and incorrectly lists “plate rappers” as one of the components to be inspected. We intended to make the periodic inspection requirements in 40 CFR 63.11410(c)(3) consistent with the initial inspection requirements in 40 CFR 63.11410(b)(3), which lists “plate wash spray heads” as a component that must be inspected but makes no mention of “plate rappers”. The amendment adds the term “plate wash spray heads” and removes the term “plate rappers” because wet electrostatic precipitators do not have plate rappers and instead use water sprays to clean the plates. We are also correcting a cross-referencing error in the second sentence of paragraph (c)(3)(iii) which requires that if an initial inspection is not required by paragraph (b)(2) of this section, the first inspection must not be more than 24 months from the last inspection. We are correcting the regulatory citation to read “paragraph (b)(3) of this section” so that the sentence refers to the initial inspection requirements for wet electrostatic precipitators instead of the initial inspection requirements for dry electrostatic precipitators.

## 2. 40 CFR 63.11413

We are also making an editorial correction to the second sentence of paragraph (a) in 40 CFR 63.11413 (Who implements and enforces this subpart?) to add the phrase “part 63,” which was inadvertently omitted from the final rule.

*D. NESHAP for Flexible Polyurethane Foam Production and Fabrication Area Sources*

On July 16, 2007 (72 FR 38910), we issued the NESHAP for Flexible Polyurethane Foam Production and Fabrication Area Sources (40 CFR part 63, subpart OOOOOO). The final rule applies to area source facilities that produce flexible polyurethane foam or rebond foam and flexible polyurethane foam fabrication facilities.

## 1. 40 CFR 63.11416

We are correcting a publication error in paragraph (b)(1) of 40 CFR 63.11416 (What are the standards for new and existing sources?). Paragraph (b)(1) at 72 FR 38911 (third column) was incorrectly printed as two separate paragraphs. We are correcting paragraph (b)(1) by combining the two sentences into one paragraph.

## 2. 40 CFR 63.11417

We are clarifying a provision in 40 CFR 63.11417 (What are the compliance requirements for new and existing sources?). Paragraph (b)(2) of 40 CFR 63.11417 requires the owner or operator of a slabstock flexible polyurethane foam production affected source who chooses to comply with prohibition on the use of methylene chloride in the production process to submit a notification of compliance status report. The second sentence in paragraph (b)(2) specifies that the notification of compliance status report must contain “the information detailed in § 63.9(h)(2)(i) paragraphs (A) and (G)” and that the report contain a specific compliance certification as stated in the rule. The amendment clarifies the NESHAP by removing the requirement that the notification of compliance status report contain the information detailed in § 63.9(h)(2)(i) paragraphs (A) and (G). In promulgating this rule, we did not intend to require compliance with the General Provisions (40 CFR part 63, subpart A) for slabstock foam production facilities that comply with the prohibition on the use of methylene chloride.

## 3. Table 1 to Subpart OOOOOO of Part 63

We are revising the introductory statement for Table 1 to Subpart OOOOOO of Part 63—Applicability of General Provisions to Subpart OOOOOO. As noted in 40 CFR 63.11418 of the NESHAP, the general provisions identified in Table 1 apply only to those affected sources that are subject to 40 CFR 63.11416(b)(1). Sources subject to 40 CFR 63.11416(b)(1) are owners or operators of new or existing slabstock

polyurethane foam production affected sources who choose to comply with the formulation limits for HAP auxiliary blowing agents. However, the introductory statement for Table 1 states that “as required in § 63.11418, you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) as shown in the following table.” This statement could imply that the requirements in Table 1 apply to all owners or operators subject to the rule, which is not the case.

Therefore, we are clarifying the introductory statement to specify that the requirements in Table 1 apply to sources subject to 40 CFR 63.11416(b)(1).

## 4. 40 CFR 63.11420

We are also making an editorial correction to the second sentence in paragraph (a) of 40 CFR 63.11420 (Who implements and enforces this subpart?) to add the phrase “part 63,” which was inadvertently omitted from the final rule.

*E. NESHAP for Lead Acid Battery Manufacturing Area Sources*

On July 16, 2007 (72 FR 38913), we issued the NESHAP for Lead Acid Battery Manufacturing Area Sources (40 CFR part 63, subpart PPPPPP). Subpart PPPPPP establishes air emission control requirements for new and existing lead acid battery manufacturing plants. We are finalizing changes to the following sections.

## 1. 40 CFR 63.11423(c)

We are clarifying paragraph (c)(1) of 40 CFR 63.11423 (What are the standards and compliance requirements for new and existing sources?). Paragraph (c)(1) provides that existing sources are not required to conduct a performance test if: (1) A prior performance test was conducted using the same methods specified in 40 CFR 60.374 of the new source performance standards (NSPS) for lead acid batteries and there has been no process change at the facility, or (2) a prior performance test was conducted using the same methods specified in 40 CFR 60.374 and the source can reliably demonstrate compliance with the requirements notwithstanding process changes. Industry representatives suggested, and we agree, that a clarification is needed to indicate that “compliance” is intended to mean compliance with the standards in 40 CFR 60.372 of the NSPS. Therefore, we are adding the phrase “with this subpart” after the word “compliance”.

We are also correcting a cross-referencing error in paragraph (c)(2) of

40 CFR 63.11423, which incorrectly states that the provisions for prior performance tests are contained in paragraph (b) of this section. The prior performance test provisions are contained in paragraph (c)(1). We are correcting this error by changing the cross reference to cite paragraph (c)(1) of this section.

#### 2. 40 CFR 63.11425(c)

We are also correcting an error in the deadline for the owner or operator of an existing source to submit the notification of compliance status report required by 40 CFR 63.9(h) of the general provisions. The date given in paragraph (c) of 40 CFR 63.11425 (What General Provisions apply to this subpart?), September 15, 2008, was set by adding 60 days to the compliance date for existing sources in the final rule. The applicable general provisions of part 63, however, allow sources additional time to submit the initial notification of compliance status when a performance test is required by the relevant standard. Specifically, 40 CFR 63.9(h)(2)(ii) requires the notification of compliance status be submitted within 60 days following completion of any compliance demonstration activity specified in the relevant standard. The NESHAP for lead acid battery manufacturers requires sources to conduct a performance test to demonstrate compliance, unless a prior performance test is sufficient as set forth in 40 CFR 63.11423(c), and the general provisions at 40 CFR 63.7(a)(2) require a source to conduct an initial performance test within 180 days of the compliance date. In sum, the applicable general provisions allow existing sources that cannot rely on a prior performance test to demonstrate compliance up to 240 days to submit the notification of compliance (180 days to conduct the performance test and 60 days to submit the notification). Consequently, we are correcting the date specified in 40 CFR 63.11425(c). The amended rule text now states: "For existing sources, the initial notification of compliance required by § 63.9(h) must be submitted not later than March 13, 2009."

#### 3. 40 CFR 63.11426

We are also clarifying the introductory language in 40 CFR 63.11426 (What definitions apply to this subpart?) by removing the phrases "as specified in § 63.11425(a)" and "as specified in § 63.11425(b)." We are removing these phrases because changes made to the rule after proposal rendered the cross references to § 63.11425 incorrect and confusing. These changes

will prevent confusion over the rule requirements because these references to 40 CFR 63.11425 no longer have any meaning within the NESHAP. We are also adding "40 CFR" before the terms "part 60" and "part 63" to complete these regulatory references.

#### 4. 40 CFR 63.11427

We are also making an editorial correction to paragraph (a) of 40 CFR 63.11427 (Who implements and enforces this subpart?) to add the phrase "part 63," which was inadvertently omitted from the final rule.

#### 5. Table 1 to Subpart PPPPPP of Part 63

These direct final rule amendments also correct a publication error in Table 1 to Subpart PPPPPP of Part 63—Applicability of General Provisions to Subpart PPPPPP at 72 FR 38915 (second column). In this correction, we are adding the words "Notification Requirements" to the subject column for the citation to 40 CFR 63.9.

#### F. NESHAP for Wood Preserving Area Sources

On July 16, 2007 (72 FR 38915), we issued the NESHAP for Wood Preserving Area Sources (40 CFR part 63, subpart QQQQQQ). Subpart QQQQQQ establishes air emissions control requirements for new and existing wood preserving operations.

#### 1. 40 CFR 63.11432

We are correcting a regulatory citation in 40 CFR 63.11432 (What General Provisions apply to this subpart?). The first sentence in paragraph (b) of 40 CFR 63.11432 incorrectly refers to § 63.9(a)(2) as requiring an initial notification of applicability. We are correcting the citation to read "§ 63.9(b)(2)."

#### 2. 40 CFR 63.11434

We are making an editorial correction to the second sentence in paragraph (a) of 40 CFR 63.11434 (Who implements and enforces this subpart?) to add the phrase "part 63," which was inadvertently omitted from the final rule.

#### 4. Table 1 to Subpart QQQQQQ of Part 63

We are also correcting a publication error in Table 1 to Subpart QQQQQQ of Part 63—Applicability of General Provisions to Subpart QQQQQQ as published at 72 FR 38917 (second and third columns). We are correcting the entry for § 63.6(e)(3)(i), (e)(3)(iii) through (e)(3)(ix), (f), (g), (h)(1), (h)(2), (h)(4), (h)(5)(i) through (h)(5)(iii), (h)(5)(v), and (h)(6) through (h)(9) to

remove the information contained in the second column (Subject) and third column (Applies to subpart QQQQQQ?) and add this information to the third and fourth columns.

## VI. Statutory and Executive Order Reviews

### A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order.

### B. Paperwork Reduction Act

This action does not impose an information collection burden. EPA is taking this action to make certain clarifications and corrections to the six area source rules. These clarifications and corrections do not include or affect any information collection requirements. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations (40 CFR part 63) under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060-0598. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For the purposes of assessing the impacts of the area source NESHAP on small entities, small entity is defined as: (1) A small business that meets the Small Business Administration size standards for small businesses found at 13 CFR 121.201 (less than 1,000 employees for acrylic and modacrylic fibers production and chromium compounds manufacturing and less than 500 employees for carbon black production, flexible polyurethane foam production and fabrication, lead acid battery manufacturing, and wood preserving); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or

special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The amendments contained in this final rule will not impose any requirements or costs on small entities. These final amendments consist only of clarifications and corrections in each of the NESHAP, and these clarifications and corrections do not create any new requirements or burdens. The clarifications and corrections in these final amendments will facilitate compliance for small entities by making the applicability of certain requirements easier to understand.

#### *D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in

the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this action does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA is taking this action to make certain clarifications and corrections to each of the area source NESHAP. No costs are associated with these clarifications and corrections. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that this action contains no regulatory requirements that might significantly or uniquely affect small governments. The clarifications and corrections made through this action contain no requirements that apply to such governments, impose no obligations upon them, and will not result in any expenditures by them or any disproportionate impacts on them. This final rule is not subject to section 203 of the UMRA.

#### *E. Executive Order 13132: Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule makes certain clarifications and corrections to each of the area source NESHAP. These final clarifications and corrections do not impose requirements on State and local governments. Thus, Executive Order 13132 does not apply to this rule.

#### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. The final rule makes certain clarifications and corrections to each of the area source NESHAP. These final clarifications and corrections do not impose requirements on tribal governments. They also have no direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to the final rule.

#### *G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it makes clarifications and corrections to each of the area source NESHAP that are based solely on technology performance.

#### *H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This final rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

#### *I. National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g.,

materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency does not use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The clarifications and corrections in this final rule do not change the level of control required by the NESHAP.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing these final rule amendments and other required information to the U.S. Senate, the U.S. House of Representatives, and the

Comptroller General of the United States prior to publication of the final rule amendments in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This final rule will be effective on June 24, 2008.

**List of Subjects in 40 CFR Part 63**

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: March 20, 2008.

**Stephen L. Johnson,**  
*Administrator.*

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

**PART 63—[AMENDED]**

■ 1. The authority citation for part 63 continues to read as follows:

*Authority:* 42 U.S.C. 7401 *et seq.*

**Subpart LLLLLL—[Amended]**

■ 2. Section 63.11399 is amended by revising the second sentence in paragraph (a) to read as follows:

**§ 63.11399 Who implements and enforces this subpart?**

(a) \* \* \* If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency pursuant to 40 CFR part 63, subpart E, then that Agency has the authority to implement and enforce this subpart. \* \* \*

**Subpart MMMMMM—[Amended]**

■ 3. Section 63.11406 is amended by revising the second sentence in paragraph (a) to read as follows:

**§ 63.11406 Who implements and enforces this subpart?**

(a) \* \* \* If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency pursuant to 40 CFR part 63, subpart E, then that Agency has the authority to implement and enforce this subpart. \* \* \*

**Subpart NNNNNN—[Amended]**

■ 4. Section 63.11410 is amended by revising paragraph (c)(3)(iii) to read as follows:

**§ 63.11410 What are the compliance requirements?**

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(iii) You must conduct inspections of the interior of the electrostatic precipitator to determine the condition and integrity of corona wires, collection plates, plate wash spray heads, hopper, and air diffuser plates every 24 months. If an initial inspection is not required by paragraph (b)(3) of this section, the first inspection must not be more than 24 months from the last inspection.

\* \* \* \* \*

■ 5. Section 63.11413 is amended by revising the second sentence in paragraph (a) to read as follows:

**§ 63.11413 Who implements and enforces this subpart?**

(a) \* \* \* If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency pursuant to 40 CFR part 63, subpart E, then that Agency has the authority to implement and enforce this subpart. \* \* \*

\* \* \* \* \*

**Subpart OOOOOO—[Amended]**

■ 6. Section 63.11416 is amended by revising paragraph (b)(1) to read as follows:

**§ 63.11416 What are the standards for new and existing sources?**

\* \* \* \* \*

(b) \* \* \*

(1) Comply with § 63.1293(a) or (b) of subpart III, except that you must use Equation 1 of this section to determine the HAP auxiliary blowing agent (ABA) formulation limit for each foam grade instead of Equation 3 of § 63.1297 of subpart III. You must use zero as the formulation limitation for any grade of foam where the result of the formulation equation (using Equation 1 of this section) is negative (*i.e.*, less than zero):

$$ABA_{\text{limit}} = -0.2 (\text{IFD}) - 19.1 \left( \frac{1}{\text{IFD}} \right) - 15.3 (\text{DEN}) - 6.8 \left( \frac{1}{\text{DEN}} \right) + 36.5 \quad (\text{Equation 1})$$

Where:

ABA<sub>limit</sub> = HAP ABA formulation limitation, parts methylene chloride ABA allowed per hundred parts polyol (pph).  
IFD = Indentation force deflection, pounds.

DEN = Density, pounds per cubic foot.  
\* \* \* \* \*

■ 7. Section 63.11417 is amended by revising the second sentence in paragraph (b)(2) to read as follows:

**§ 63.11417 What are the compliance requirements for new and existing sources?**

(b) \* \* \*  
 (2) \* \* \* The report must contain this certification of compliance, signed by a responsible official, for the standards in § 63.11416(b)(2): “This facility uses no material containing methylene chloride for any purpose on any slabstock flexible foam process.”

■ 8. Section 63.11420 is amended by revising the second sentence in paragraph (a) to read as follows:

**§ 63.11420 Who implements and enforces this subpart?**

(a) \* \* \* If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency pursuant to 40 CFR part 63, subpart E, then that Agency has the authority to implement and enforce this subpart. \* \* \*

■ 9. The introductory text preceding Table 1 to Subpart OOOOOO is removed and introductory text is added after the table heading to read as follows:

Table 1 to Subpart OOOOOO of Part 63—Applicability of General Provisions to Subpart OOOOOO

As required in § 63.11418, sources subject to § 63.11416(b)(1) must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) as shown in the following table.

\* \* \* \* \*

**Subpart P P P P P P—[Amended]**

■ 10. Section 63.11423 is amended by revising paragraphs (c)(1) and (2) to read as follows:

**§ 63.11423 What are the standards and compliance requirements for new and existing sources?**

(c) \* \* \*  
 (1) Existing sources are not required to conduct a performance test if a prior performance test was conducted using the same methods specified in 40 CFR 60.374 and either no process changes have been made since the test, or you can demonstrate that the results of the performance test, with or without adjustments, reliably demonstrate compliance with this subpart despite process changes.

(2) Sources without a prior performance test, as described in paragraph (c)(1) of this section, must conduct a performance test using the methods specified in 40 CFR 60.374 by 180 days after the compliance date.

■ 11. Section 63.11425 is amended by revising paragraph (c) to read as follows:

**§ 63.11425 What General Provisions apply to this subpart?**

(c) For existing sources, the initial notification of compliance required by § 63.9(h) must be submitted not later than March 13, 2009.

■ 12. The introductory text to § 63.11426 is revised to read as follows:

**§ 63.11426 What definitions apply to this subpart?**

The terms used in this subpart are defined in the CAA; 40 CFR 60.371; 40 CFR 60.2 for terms used in the applicable provisions of 40 CFR part 60,

subpart A; and § 63.2 for terms used in the applicable provisions of 40 CFR part 63, subpart A.

\* \* \* \* \*

■ 13. Section 63.11427 is amended by:

- a. Revising the second sentence in paragraph (a);
- b. Revising the first sentence in paragraph (b)(2);
- c. Revising the first sentence in paragraph (b)(3); and
- d. Revising the first sentence in paragraph (b)(4) to read as follows:

**§ 63.11427 Who implements and enforces this subpart?**

(a) \* \* \* If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency pursuant to 40 CFR part 63, subpart E, then that Agency has the authority to implement and enforce this subpart. \* \* \*

(b) \* \* \*  
 (2) Approval of a major change to test methods under § 63.7(e)(2)(ii) and (f). \* \* \*

(3) Approval of a major change to monitoring under § 63.8(f). \* \* \*

(4) Approval of a major change to recordkeeping/reporting under § 63.10(f). \* \* \*

■ 14. Table 1 to Subpart P P P P P P of Part 63 is amended by removing the introductory text preceding the table and by adding introductory text after the table heading; and revising the entry for § 63.9 to read as follows:

Table 1 to Subpart P P P P P P of Part 63—Applicability of General Provisions to Subpart P P P P P P

As required in § 63.11425, you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) as shown in the following table.

Citation	Subject	Applies to subpart P P P P P P?	Explanation
63.9	Notification Requirements	Yes	

**Subpart Q Q Q Q Q Q—[Amended]**

■ 15. Section 63.11432 is amended by revising the first sentence in paragraph (b) introductory text to read as follows:

**§ 63.11432 What General Provisions apply to this subpart?**

(b) If you own or operate a new or existing affected source that uses any wood preservative containing chromium, arsenic, dioxins, or

methylene chloride, you must submit an initial notification of applicability required by § 63.9(b)(2) no later than 90 days after the applicable compliance date specified in § 63.11429. \* \* \*

■ 16. Section 63.11434 is amended by revising the second sentence in paragraph (a) to read as follows:

**§ 63.11434 Who implements and enforces this subpart?**

(a) \* \* \* If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency pursuant to 40 CFR part 63, subpart E, then that Agency has the authority to implement and enforce this subpart. \* \* \*

■ 17. Table 1 to Subpart Q Q Q Q Q Q of Part 63 is amended by removing the introductory text preceding the table

and adding introductory text after the table heading; and revising the entry, “63.6(e)(3)(i), (e)(3)(iii)–(e)(3)(ix), (f), (g), (h)(1), (h)(2), (h)(4), (h)(5)(i)–(h)(5)(iii),

(h)(v)(v), (h)(6)–(h)(9)” to read as follows:  
Table 1 to Subpart QQQQQQ of Part 63– Applicability of General Provisions to Subpart QQQQQQ

As required in § 63.11432, you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) as shown in the following table.

Citation	Subject	Applies to subpart QQQQQQ?	Explanation
* * * * *	* * * * *	* * * * *	* * * * *
63.6(e)(3)(i), (e)(3)(iii)–(e)(3)(ix), (f), (g), (h)(1), (h)(2), (h)(4), (h)(5)(i)–(h)(5)(iii), (h)(5)(v), (h)(6)–(h)(9).	.....	No .....	Subpart QQQQQQ does not require a startup, shutdown, and malfunction plan or contain emission or opacity limits.
* * * * *	* * * * *	* * * * *	* * * * *

[FR Doc. E8–6184 Filed 3–25–08; 8:45 am]  
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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[EPA–HQ–OPP–2007–0107; FRL–8356–2]

**Myclobutanil; Pesticide Tolerance**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for combined residues of myclobutanil and its alcohol metabolite in or on artichoke, globe; black sapote; canistel; cilantro, leaves; leafy greens, subgroup 4A, except spinach; mamey sapote; mango; okra; papaya; sapodilla; star apple; and fruiting vegetable group 8, except tomato. Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA). EPA is also deleting several established myclobutanil tolerances that are no longer needed.

**DATES:** This regulation is effective March 26, 2008. Objections and requests for hearings must be received on or before May 27, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION** ).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0107. To access the electronic docket, go to <http://www.regulations.gov>, select “Advanced Search,” then “Docket Search.” Insert the docket ID number where indicated and select the “Submit” button. Follow the instructions on the [regulations.gov](http://www.regulations.gov)

website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in [regulations.gov](http://www.regulations.gov). Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Barbara Madden, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6463; e-mail address: [madden.barbara@epa.gov](mailto:madden.barbara@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111), e.g., agricultural workers; greenhouse,

nursery, and floriculture workers; farmers.

- Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS code 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Access Electronic Copies of this Document?*

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at <http://www.regulations.gov>, you may access this **Federal Register** document electronically through the EPA Internet under the “**Federal Register**” listings at <http://www.epa.gov/fedrgstr>. You may also access a frequently updated electronic version of EPA’s tolerance regulations at 40 CFR part 180 through the Government Printing Office’s pilot e-CFR site at <http://www.gpoaccess.gov/ecfr>.